

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

In Re Dana Elisha Dzwonczyk

Case No. 5:11-MC-0044
(NAM/GHL)

APPEARANCES

DANA ELISHA DZWONCZYK,
Plaintiff *pro se*
514 Charles Avenue #7
Syracuse, New York 13209

GEORGE H. LOWE, United States Magistrate Judge

ORDER and REPORT-RECOMMENDATION

The Clerk has sent a *pro se* petition together with an application to proceed *in forma pauperis* to the Court for review. (Dkt. Nos. 1 and 2.) For the reasons discussed below, I order that Petitioner's *in forma pauperis* application is granted and recommend that her action be dismissed with prejudice.

II. PETITIONER'S APPLICATION TO PROCEED *IN FORMA PAUPERIS*

After reviewing Petitioner's *in forma pauperis* application (Dkt. No. 2), the Court finds that Petitioner may properly proceed with this matter *in forma pauperis*.

III. SUFFICIENCY OF THE PETITION

28 U.S.C. § 1915(e) directs that when a party seeks to proceed *in forma pauperis*, "the court shall dismiss the case at any time if the court determines that . . . the action . . . is frivolous or malicious [,] fails to state a claim on which relief may be granted[,] or . . . seeks monetary relief against a defendant who is immune from such relief." 28 U.S.C. § 1915(e)(2)(B).¹ Thus, the court has a responsibility to determine that an action may be properly maintained before it may permit a party to

¹ In determining whether an action is frivolous, the court must look to see whether the complaint lacks an arguable basis either in law or in fact. *Neitzke v. Williams*, 490 U.S. 319, 325 (1989).

proceed *in forma pauperis*.² See *id.* Although the court has the duty to show liberality towards *pro se* litigants, *Nance v. Kelly*, 912 F.2d 605, 606 (2d Cir. 1990) (per curiam), and extreme caution should be exercised in ordering *sua sponte* dismissal of a *pro se* action, *Anderson v. Coughlin*, 700 F.2d 37, 41 (2d Cir. 1983), there is a responsibility on the court to determine that an action states a claim and that the claim is not frivolous before permitting a party to proceed with an action *in forma pauperis*. See e.g. *Thomas v. Scully*, 943 F.2d 259, 260 (2d Cir. 1991) (per curiam) (holding that a district court has the power to dismiss a complaint *sua sponte* if the complaint is frivolous).

Petitioner “respectfully moves for an [order] permitting [her] to change [her] name from Dana Elisha Dzwonczyk to Dana Elisha Rockeffeler.” (Dkt. No. 1 at 1.) This Court does not have subject matter jurisdiction in this matter. Other than in the limited context of naturalization (*see Janata v. I.N.S.*, No. M-54 (JFK), 1995 WL 312491 (S.D.N.Y. May 22, 1995); 8 U.S.C. 1447(e) (West 2005)), federal court is not the proper forum for name changes. Rather, in New York a “petition for leave to assume another name may be made by a resident of the state to the county court of the county or the supreme court of the county in which he resides . . .” N.Y. Civ. Rights Law § 60 (McKinney 2011). Therefore, I recommend that the Court dismiss the petition with prejudice. Petitioner is, of course, free to pursue her petition in the appropriate state court.

WHEREFORE, it is hereby

ORDERED that the application to proceed *in forma pauperis* (Dkt. No. 2) is **GRANTED**; and it is further

RECOMMENDED that the petition be dismissed with prejudice; and it is further

² Dismissal of frivolous actions pursuant to 28 U.S.C. § 1915(e) is appropriate to prevent abuses of the process of the court, *Harkins v. Eldredge*, 505 F.2d 802, 804 (8th Cir. 1974), as well as to discourage the waste of judicial resources. *Neitzke*, 490 U.S. at 327.

ORDERED that the Clerk serve a copy of this Report-Recommendation on Petitioner.

Pursuant to 28 U.S.C. § 636(b)(1), the parties have fourteen days within which to file written objections to the foregoing report. Such objections shall be filed with the Clerk of the Court.

FAILURE TO OBJECT TO THIS REPORT WITHIN FOURTEEN DAYS WILL PRECLUDE APPELLATE REVIEW. *Roldan v. Racette*, 984 F.2d 85 (2d Cir. 1993) (citing *Small v. Sec'y of Health and Human Servs.*, 892 F.2d 15 (2d Cir. 1989)); 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72, 6(a).

Dated: December 6, 2011
Syracuse, New York



George H. Lowe
United States Magistrate Judge